Exhibit 2

Page 1

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA

3   SAN FRANCISCO DIVISION

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5   )

   ORACLE AMERICA, INC.,   )

6   )

            Plaintiff,   )

7   )

        vs.   )Case No.:

8   )3:10-cv-03561-WHA

   GOOGLE, INC.,   )

9   )

            Defendant.   )

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14   VIDEOTAPED DEPOSITION OF CHRIS KEMERER, Ph.D.

15   San Francisco, California

16   Thursday, March 3, 2016

17   Volume 1

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23   Reported by:

   RACHEL FERRIER, CSR No. 6948

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25   Job No. CS2265292

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1   Q   Okay. This is one of the scripts that your team
2 used to calculate package change across the Java SE
3 versions; true?
4   A   That's what Appendix C is labeled, yes.
5   Q   All right. And do you see lines 18 through
6 line 265 contain a list of API packages that we have
7 been talking about during this case?
8   A   Yes, I see that list.
9   Q   All right. And this is the list that your team
10 studied for purposes of its analysis of stability in
11 APIs; right?
12   A   Yes. I expect it to be at least part of the
13 analysis, yes.
14   Q   Do you know where this list came from?
15   A   No.
16   Q   There appears to be 247 independent APIs listed
17 between lines 18 and 265 on this Appendix C.
18   Do you know whether Java has 247 APIs? And I
19 should be specific, Java SE?
20   A   No, I don't believe so.
21   Q   All right. Well, let's take a look at Appendix G
22 of your opening report where you discuss what's
23 contained in Java SE 5.
24   A   I'm sorry, page number?
25   Q   Sure.

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1   Appendix G starts on page 154 of your opening
2 report?
3   A   Okay. I have that.
4   Q   All right. Does it sound right to you that
5 Java SE 5 has about 166 APIs?
6   A   Short of counting them, that sounds approximately
7 correct.
8   Q   Okay. So does having looked at your Appendix G
9 and the appendix we were looking at before to your reply
10 report -- do you have any explanation for why the number
11 of APIs contained in the analysis for the script that
12 analyzed stability contained about 247 APIs?
13   A   No, I don't.
14   Q   Who would you ask to find that out?
15   A   That would be the same answer as I gave to the
16 earlier similar question.
17   Q   Ask the technical team?
18   A   Yes.
19   Q   Okay. Let's talk a little bit about some of the
20 statements in your report on the subject of copying.
21   In your report -- and it appears in the opening
22 report, starting at about paragraph 61, and in other
23 places throughout your opinions, you refer to the notion
24 that Google copied thousands of lines of code and the
25 SSO.

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1   Do you recall that?
2   A   Yes, I have that paragraph in front of me.
3   Q   Okay. And when you say that Google copied lines
4 of code in the SSO, specifically, what do you mean by
5 that?
6   A   It's my understanding that this was
7 established -- and it's part of the Court of Appeals
8 findings -- that copying took place and that the
9 declaring code of the 37 packages at issue and their SSO
10 was copied from Java SE 5.
11   Q   And that was the basis for your statements in
12 your report?
13   A   I understood that from the Court of Appeals, but
14 also I've read the report and discussed with
15 Mr. Zeidman, who has also done an independent analysis
16 of copying.
17   Q   Have you given me the bases for your statements
18 about copying by Google?
19   MR. RAMSEY: Objection; form.
20   THE WITNESS: I -- I thought I just did so.
21 Maybe I don't understand your question.
22 BY MS. ANDERSON:
23   Q   I just want to make sure that I have exhausted
24 the bases for your statements that Google copied lines
25 of code in SSO.

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1   Have you given me all your bases?
2   A   Oh. Yes, I believe I have.
3   Q   Thank you.
4   Do you consider yourself to have expertise in the
5 subject of open-source licensing?
6   A   My opening sentence, of course, has to be the
7 standard: I am not a lawyer. And the question of
8 licensing, at some level, is a legal question, so I am
9 not here to offer a legal opinion on open-source
10 licensing.
11   What I have done in my reports is I've offered an
12 opinion from the business perspective. I have, you
13 know, familiarity with software contracts, again, from
14 the point of view of a manager of software development,
15 and, of course, I've read the license at issue in this
16 case. I've also read the reports of Mr. Hall and
17 Ms. Murray in forming my opinions and also
18 contemporaneous statements, particularly made by the
19 business leaders at Google.
20   Q   Do you consider yourself to have expertise in the
21 subject of open-source licensing?
22   A   I believe I have an informed opinion based on my
23 background in the software business, but not a legal
24 opinion.
25   Q   When you say you believe you have an informed

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1 and software that were discussed in your deposition?

2   MS. ANDERSON: Objection; leading.

3   THE WITNESS: No, I have no such doubts.

4 BY MR. RAMSEY:

5   Q   And what is your -- what is the reason why you

6 have no doubts about the scripts and programs discussed

7 on the record today?

8   A   Twofold, primarily.

9   One, I've met and worked with the people who

10 wrote the programs, and I believe them to be competent.

11 And, two, although I've approached this whole task in a

12 similar way that I would approach a research paper that

13 I would be writing -- and I try to document the steps

14 I've taken so that the reader can follow along my

15 analysis and understand what I've done -- I also know

16 that -- and it seems like an odd way to think about it,

17 but the benefit of this being a legal proceeding and

18 being an adversarial proceeding is that when I put the

19 full script as an appendix to my reports, I know that

20 there will be experts on the Google side who will want

21 to read those, and that sort of serves as another check

22 for you. If someone's going to find a mistake, I know

23 that the other side is highly motivated to try to find

24 such a mistake, if an error did exist, so the

25 combination of my confidence in the people that I've

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1 worked with and the fact that an adversary has had an

2 opportunity or multiple opportunities to look at these

3 scripts increases my confidence that they were done

4 accurately.

5   Q   Were members of your technical team software

6 engineers, to your understanding?

7   MS. ANDERSON: Objection; leading.

8   THE WITNESS: To my understanding, yes. In

9 particular, I mentioned earlier Mohammed, who attended

10 my alma mater, Carnegie Mellon University, and -- and

11 his background is in software engineering.

12   MR. RAMSEY: All right. Thank you. No further

13 questions.

14   MS. ANDERSON: No questions. Thank you.

15   THE VIDEOGRAPHER: This concludes today's

16 videotaped deposition of Dr. Chris Kemerer.

17   We are off the record at 3:57 p.m. Thank you.

18   (TIME NOTED: 3:57 P.M.)

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1   I, CHRIS KEMERER, Ph.D., do hereby declare

2 under penalty of perjury that I have read the foregoing

3 transcript; that I have made any corrections as appear

4 noted, in ink, initialed by me, or attached hereto; that

5 my testimony as contained herein, as corrected, is true

6 and correct.

7   EXECUTED this _____ day of _____,

8 2016, at _____, _____.

9   (City)   (State)

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11   _____

12   CHRIS KEMERER, Ph.D.

13   VOLUME 1

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4   I, the undersigned, a Certified Shorthand

5 Reporter of the State of California, do hereby certify:

6   That the foregoing proceedings were taken before

7 me at the time and place herein set forth; that any

8 witnesses in the foregoing proceedings, prior to

9 testifying, were placed under oath; that a verbatim

10 record of the proceedings was made by me using machine

11 shorthand which was thereafter transcribed under my

12 direction; further, that the foregoing is an accurate

13 transcription thereof.

14   I further certify that I am neither financially

15 interested in the action nor a relative or employee of

16 any attorney or any of the parties.

17   IN WITNESS WHEREOF, I have this date subscribed

18 my name.

19

20 Dated: March 4, 2016

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23   _____

24   RACHEL FERRIER

25   CSR No. 6948

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